

POLICE/SHERIFF'S DEPARTMENT	RULES AND REGULATIONS
SUBJECT: Termination of Employment	NUMBER: 1-20
EFFECTIVE DATE: July 1, 1999	REVIEW DATE:
AMENDS/SUPERSEDES:	APPROVED: _____ Chief of Police/Sheriff
CALEA STANDARDS: 26.1	VLEPSC STANDARDS: PER.09.02

NOTE

This order is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third-party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

INDEX WORDS

Decertification
Discharge
Discipline
Dismissal
Resignation
Retirement
Separation; voluntary/involuntary
Supervision
Termination of employment
Training

I. POLICY

Employees may resign voluntarily or perhaps their employment may be terminated with cause. In either case, for the protection of the employee as well as the department, a formal process is herein set forth that outlines the different ways in which employment terminates, highlighting the rights and obligations of the employee and the department. The chief executive is not bound or required to accept an employee's voluntary notice of resignation. The manner in which the employee resigns or otherwise terminates employment is a department prerogative. Note that this order applies to **all** sworn (full-, part-time, reserve, auxiliary) and non-sworn positions within the department.

II. PURPOSE

The purpose of this order is to outline and establish procedures concerning different methods of resignation or termination of employment.

III. DEFINITIONS

A. Advance notice

Two weeks' written notice to the department of an employee's voluntary resignation from employment.

B. Disability retirement

A form of separation resulting from a permanent, disabling condition which prevents the employee from performing his or her duties.

C. Discharge

An employee's involuntary termination of employment **excluding** termination as a result of a reduction in force or layoff.

D. Discipline

Training or developing an employee by proper supervision and instruction. Discipline may be positive (awards) or negative (punishment).

E. Good standing

A description of employee behavior, recognized by the department as acceptable to the job position and not subject to discipline for poor behavior or performance.

F. Involuntary separation

A separation from employment that is reported as a resignation, based on documented evidence of poor performance, and concluded by a signed, written agreement between the employee and the department. Through the written document, the department and the employee mutually agree to sever the employment relationship.

G. Relief from duty

An administrative action by a superior whereby a subordinate officer is temporarily relieved from performing his or her duties.

H. Resignation pending discipline

A separation from employment based on documented evidence of the employee's poor performance, misconduct, or uncharged criminal conduct, concluded by a signed, written agreement between the employee and the department.

I. Retirement

Voluntary separation from employment after completing // years of service.

J. Termination for cause

An involuntary separation from employment based on documented evidence of an employee's poor performance, misconduct, charged or uncharged criminal conduct, or a job-related felony conviction where a formal administrative complaint has been brought against the employee, concluded by a formal or informal departmental administrative hearing where cause has been established. "Cause" refers to a violation of a departmental administrative order, a city or county ordinance, or state or federal law.

K. Voluntary resignation

A separation from employment where the department acknowledges the employee to be in good standing and not subject to pending discipline. Resignation is a formal process by which an employee submits written notice (preferably at least two weeks) of an intention to terminate a position with the department.

IV. PROCEDURES

A. Voluntary resignation

1. Employees shall provide to the chief of police/sheriff at least two weeks' written notice of their intention to resign. If the employee is in good standing, his or her request shall be recognized by the department.
2. An employee in good standing may request that the period of notice be waived.
3. If an employee fails to provide advance notice of resignation, the termination report shall be amended to read, "Separation from employment without notice," and placed in the personnel file.
4. An employee who wishes to withdraw or rescind a letter of resignation may so request not later than 30 days following the effective date of the resignation. If the position remains vacant, the chief of police/sheriff, at his or her discretion, may reinstate the employee as if the resignation had never been requested.

B. Involuntary separation

1. The department shall prepare a written agreement of involuntary separation to be signed by the employee and the chief of police/sheriff. The agreement shall cite documented poor performance.
2. When responding to requests from future employers conducting background investigations, the department shall only acknowledge the conclusion of the employment relationship as a "resignation under conditions where the employee's performance did not meet the needs or expectations of the department."
3. The chief of police/sheriff retains the discretion to decide whether advance notice will or will not be given to the employee to be separated.

C. Termination of probation

1. The department may terminate the employment of a probationary employee without a right of appeal or grievance. Sworn officers serve a probationary period defined as one year following hiring. For non-sworn personnel, the probationary period is six months following hiring.

[Note: Most departments observe a one-year probationary period for sworn personnel, six months for non-sworn. Agencies should consider that six months is very little time to observe work patterns and behavior because new officers spend months in an academy, so a minimum of a year may be more appropriate.]

2. The employee termination report shall state either "unsatisfactory performance during the probationary period" or "resignation."

D. Resignation pending discipline

1. The employee or his or her legal counsel must request a resignation pending discipline.
2. The resignation pending discipline requires a written agreement, co-signed by the employee and the chief of police/sheriff, acknowledging that

- a. the employee has volunteered to resign based on poor performance, misconduct, or uncharged criminal conduct while employed by the department, whichever is applicable; and
 - b. the employee understands that he or she has no rehire rights and shall not be considered for future employment with the department; and
 - c. the employee understands that should the department receive a written request for employment background information, with an authorization to release the information signed by the employee, the department shall acknowledge the fact of the employment by responding in writing with the words, "resignation pending discipline" (If requested, the department may produce the evidence that led to the resignation); and
 - d. the employee understands that if the department is served with a subpoena requesting information concerning the resignation, the department shall disclose the terms of the "resignation pending discipline" and the relevant evidence.
3. When responding to telephonic requests from future employers or those conducting background investigations, the department shall acknowledge the termination of employment as "resignation pending discipline; the ex-employee has no rehire rights with the department and shall not be considered for future employment."
 4. No advance notice is required for an employee to resign pending discipline.
 5. In cases where a formal administrative hearing or an appellate proceeding has finally adjudicated an issue concerning evidence of an employee's poor performance, misconduct, or uncharged criminal conduct, a resignation pending discipline shall not be allowed.

E. Termination for cause

[The following provision is appropriate for a sheriff's office:]

1. No advance notice is required before terminating employment for cause.

[The following provision is appropriate for a police department whose sworn officers are subject to procedural guarantees per Virginia Code § 2.1-116.2:]

1. Before terminating employment for cause, the officer shall be notified in writing of the basis for the termination and shall be given an opportunity within five calendar days after receiving written notice to respond orally and in writing. Within five days after making a response, the chief of police shall notify the officer in writing of the intention to take further or no action.
2. Persons whose employment has been terminated for cause have the right to a hearing concerning the evidence relevant to their dismissal.
3. Persons whose employment has been terminated for cause are precluded from future employment with the department unless the department later finds that the evidence which sustained the termination for cause was incompetent or unreliable.
4. Under no circumstances shall members of the department respond to oral or written requests for information on employees who have been terminated for cause. To release any information, the department must receive written authorization, signed by the former employee. Upon receipt of written authorization, the department may provide the requesting

agency with the terms of the employee's termination for cause, the relevant evidence that supported the termination, and any administrative decision which has been reached by a hearing officer or panel related to the termination.

F. Retirement

1. Retirement may provide an alternate form of resignation if the employee becomes unable to perform the job.
2. If an employee becomes mentally or physically incapable of performing the job and no reasonable accommodation can be found, including placement in another job through demotion or transfer, the department may require the employee to apply for disability or early retirement.

V. **MANDATORY REPORTING OF RESIGNATIONS OR TERMINATION**

A. Compliance with state employment reporting procedures

1. To comply with the regulations established by the Criminal Justice Services Board (CJSB) and the Department of Criminal Justice Services (DCJS) and as otherwise specified by law, agencies shall submit notice of resignations or the termination status of all sworn officers and dispatchers.
2. If the sworn officer or dispatcher resigns or has his or her employment terminated for reasons that may subject the officer to decertification, the department concerned shall notify DCJS as required by law.

B. Decertification

1. By law, officers (and jail officers) may only be decertified under the following conditions:
 - a. The officer has been convicted of or has pled no contest to a felony or any offense that would be a felony if committed in Virginia;
 - b. The officer has failed to comply with or maintain compliance with mandated training requirements.
 - c. The officer has refused to submit to a drug screening or produce a positive result on a drug screening reported to the employer, where the positive result cannot be explained to the agency's satisfaction.
2. Per *Virginia Code* § 15.2-1708, the following procedures shall be observed in decertifying a sworn officer (or jail officer):
 - a. The agency must submit a written request to DCJS, signed by the agency's chief executive, specifying that a reason for decertification exists. The letter must include sufficient documentation for the request and the results of any due-process hearings.
 - b. Within ten days of receipt of the letter, DCJS, on behalf of the CJSB, shall send a letter to the affected officer and the employing agency which acknowledges the request for decertification. The letter shall also advise all parties of the available legal remedies.

- c. If the affected officer does not request a hearing within 30 days of receipt of the DCJS letter, DCJS, on behalf of the CJSB, shall prepare a notice of decertification which shall be mailed to the affected officer and the employing agency.
- d. If the affected officer requests a hearing, the CJSB shall set a date, time, and location for the hearing and shall notify the affected officer and the employer. The hearing shall be conducted within 60 days of receipt of the hearing request.
- e. Upon completion of the hearing, the chairman, CJSB executive committee, shall report to the CJSB which shall then make a final determination concerning decertification within 30 days after the hearing.
- f. The DCJS shall send to the affected officer and employing agency the written notification of the final decision of the CJSB within 10 days of the final decision.

EMPLOYEE RESIGNATION/TERMINATION REPORT

Name of Employee: _____
Last First Initial

SSN: _____ Effective date of separation: _____

Type of Resignation/Termination:

- ☐ Voluntary resignation ☐ Involuntary separation
☐ Termination of probation ☐ Resignation pending discipline
☐ Termination for cause ☐ Retirement from service
☐ Disability retirement

Advance Notice:*

☐ Yes ☐ No

Consideration for Future Employment:

☐ Yes ☐ No

Authorization:

Chief of Police/Sheriff Date

Withdrawal of Resignation Requested:

(Must be requested within 30 days of separation, vacancy of position)

☐ Yes Date of request for withdrawal of resignation: _____

☐ Approved ☐ Denied

Authorization:

Chief of Police/Sheriff Date

* Advance notice is required for police officers per *Virginia Code* § 2.1-116.2.